Johnson v. Lions Gate Entertainment Corp. et al Doc. 7

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FILED ELECTRONICALLY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THEODORE JOHNSON, an individual, Plaintiff, - against - LIONS GATE ENTERTAINMENT CORP., and BLACK ENTERTAINMENT TELEVISION, INC., Defendants.	06 Civ. 5866 (HB) **ANSWER OF DEFENDANT LIONS GATE ENTERTAINMENT CORP.**

Defendant Lions Gate Entertainment Corp. ("Lions Gate"), by its undersigned attorneys Davis Wright Tremaine LLP, as and for its Answer to the Complaint of plaintiff Theodore Johnson ("Johnson" or "Plaintiff"), alleges as follows:

1. To the extent the allegations in paragraph 1 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 1 are deemed allegations of fact, defendant denies each and every allegation therein.

2. To the extent the allegations in paragraph 2 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 2 are deemed allegations of fact, defendant denies each and every allegation therein.

3. To the extent the allegations in paragraph 3 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 3 are deemed allegations

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of fact, defendant denies the allegations therein, except defendant admits that the DVD version of the movie *Caught Up* was released and broadcast on television.

4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.

5. Defendant admits the allegations in paragraph 5.

6. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6.

7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

9. To the extent the allegations in paragraph 9 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 9 are deemed allegations of fact, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations therein.

10. Defendant denies the allegations in paragraph 10, except refers to Exhibit A of the Complaint for a true and correct description of the contents thereof.

11. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 11.

12. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 12, except states that it has been unable to find a single reference outside of the Complaint to any entity or location called "Gauguin-LA."

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

14. To the extent the allegations in paragraph 14 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 14 are deemed allegations of fact, defendant denies each and every allegation therein.

15. Defendant lacks knowledge or information to form a belief as to the truth of the allegations in paragraph 15.

16. Defendant lacks knowledge or information to form a belief as to the truth of the allegations in paragraph 16.

17. Defendant lacks knowledge or information to form a belief as to the truth of the allegations in paragraph 17.

18. Defendant admits the allegations in paragraph 18.

19. Defendant admits the allegations in paragraph 19, except that defendant denies that Lions Gate completed the purchase of Artisan for about $160 million.

20. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20, except defendant denies that it has infringed any of Plaintiff's rights.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21.

22. Defendant denies the allegations in paragraph 22, except defendant refers to the DVD version of *Caught Up* for a true and correct description of the contents thereof and lacks knowledge or information sufficient to form a belief as to what Mr. Johnson observed.

23. Defendant denies the allegations in paragraph 23, except defendant refers to the DVD version of *Caught Up* for a true and correct description of the contents thereof and lacks knowledge or information sufficient to form a belief as to what Mr. Johnson observed.

24. Defendant denies the allegations in paragraph 24, except defendant refers to the DVD version of *Caught Up* for a true and correct description of the contents thereof and lacks knowledge or information sufficient to form a belief as to what Mr. Johnson heard or observed.

25. Defendant denies knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 25, except that defendant admits that it received a letter dated August 26, 2005 from Walter J. Tencza, Esq. concerning Plaintiff's claims.

26. Defendant admits the allegations in paragraph 26.

27. To the extent the allegations in paragraph 27 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 27 are deemed allegations of fact, defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations therein, except that defendant denies that *Caught Up* infringes any of Plaintiff's rights.

28. To the extent the allegations in paragraph 28 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 28 are deemed allegations of fact, defendant denies each and every allegation therein.

29. To the extent the allegations in paragraph 29 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 29 are deemed allegations of fact, defendant denies the allegations therein, except that defendant admits that *Caught Up* has generated profits for defendant.

FIRST CAUSE OF ACTION [sic]
(Copyright Infringement)

30. Defendant repeats its responses to paragraphs 1-29.

31. To the extent the allegations in paragraph 31 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 31 are deemed allegations of fact, defendant denies the allegations therein.

32. To the extent the allegations in paragraph 32 are allegations of law, defendant is not required to plead thereto; to the extent the allegations in paragraph 32 are deemed allegations of fact, defendant denies the allegations therein.

FIRST AFFIRMATIVE DEFENSE

33. The complaint fails, in whole or in part, to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

34. Defendants' use of the Artwork is de minimis and therefore non-actionable.

THIRD AFFIRMATIVE DEFENSE

35. Defendants' use of the Artwork is a fair use and therefore non-actionable.

FOURTH AFFIRMATIVE DEFENSE

36. Defendant's use of the Artwork was an incidental use.

FIFTH AFFIRMATIVE DEFENSE

37. Plaintiff's claims are barred by the equitable doctrines of acquiescence, waiver, estoppel and laches.

SIXTH AFFIRMATIVE DEFENSE

38. Upon information and belief, Plaintiff does not hold a valid copyright in the Artwork.

SEVENTH AFFIRMATIVE DEFENSE

39. Plaintiffs claims are barred, in whole or in part, by the Statute of Limitations.

Date: New York, New York
October 5, 2006

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